IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

FRIDAY, THE 27TH JULY 2007 / 5TH SRAVANA 1929

WP(C).No. 23087 of 2007(W)

OS.145/2002 of SUB COURT, MANJERI

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PETITIONER: RESPONDENT NO.4 AND 5:

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1. MAVELI DEVASYA'S WIFE ROSAMMA,
   RESIDING AT MAVELI HOUSE, NILAMBUR TALUK,
   AMARAMBALAM AMSOM, KARULAYIL, MALAPPURAM DISTRICT.

2. XAVIER, S/O.MAVELI DEVASYA, RESIDING
   AT MAVELI HOUSE, NILAMBUR TALUK,
   AMARAMBALAM AMSOM, KARULAYIL, MALAPPURAM DISTRICT.

3. MAVELI MATHEW'S WIFE ANNAMMA MATHEW,
   RESIDING AT MAVELI HOUSE, NILAMBUR TALUK,
   AMARAMBALAM AMSOM, KARULAYIL, MALAPPURAM DISTRICT.

BY ADV. SRI.K.M.SATHYANATHA MENON

RESPONDENTS: 2ETITIONERS 1-3:

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1. P.N.VENKIDA SUBRAHMANIAYYAR (LATE)
   (NAME STRUCK OFF AS PER ORDER IN I.A. 1172/2004
   DATED 19-7-2006).

2. P.V.NARAYANAN, S/O. P.N.VENKIDA
   SUBRAHMANIAYYAR, RESIDING AT PALAKKAD TALUK,
   HARAYINI AMSOM, PALLIPPURAM VILLAGE,
   PALAKKAD DISTRICT.

3. P.V.SESHADRI, S/O. P.N.VENKIDA
   SUBRAHMANIAYYAR, RESIDING AT PALAKKAD TALUK,
   HARAYINI AMSOM, PALLIPPURAM VILLAGE,
   PALAKKAD DISTRICT.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 27/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N.KRISHNAN, J.

WP(C)No. 23087 OF 2007 W

Dated this the 27th July, 2007.

JUDGMENT

This writ petition is filed seeking to set aside the order of the learned Subordinate Judge, Manjeri in I.A.1273/06 in O.S.145/2002. It was an application filed by the plaintiff for amendment of the plaint. A suit was pending before the Hon'ble High Court of Madras and during its pendency a compromise was entered into between the parties and it is averred that items 210 to 282 of the plaint schedule property therein was set apart to the share of the plaintiffs jointly and therefore the plaintiffs are claiming right over that property. They had given description of the property in that fashion and when a commissioner appointed by the court visited the property he found that the survey numbers, description etc. are incorrect and he had plotted the plaint schedule property as shown by the plaintiffs which takes in a different survey number, description etc. Whatever it may be, in order to succeed in a case of this nature the plaintiff has to establish that the property now claimed were obtained by them in pursuance of the decree passed by the High Court of Madras and until and unless they are able to establish that the property now incorporated by amendment is the property

which they had obtained under the decree, the plaintiff will not be entitled to any decree. It has to be understood that at a point of time when thousands of acres of property were involved in a suit and a receiver was appointed and the receiver giving the schedule of properties, naturally there would have been omissions and commissions. Therefore that shall not be used as a weapon to dislodge the case of a party if really the party is entitled to the property in law. Therefore, by the amendment no special right is conferred on the plaintiff but it is made easier for the court to consider the question whether the property as amended and incorporated is obtained by the plaintiff by virtue of the document of title relied on by them. So far as adverse possession is concerned, it is a settled law that there must be an admission of title of the person against whom adverse possession is claimed. I am not going much into the details because it may prejudice the right of the party at a later stage. Therefore, by allowing the amendment no undue hardship is caused, it will not change the character of the suit but it is really necessary for resolving the controversy between the parties. I make it clear that the defence in their additional written statement can take all the defence available including the plea of adverse

possession and limitation and the identity of the property and the court has to dispose of the matter after permitting both sides to adduce evidence in support of their respective contentions. Therefore, I am not inclined to interfere with the order passed by the learned Subordinate Judge and therefore this writ petition is dismissed.

M.N.KRISHNAN
Judge

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